

No. 20-10704-GG

United States Court of Appeals
For the Eleventh Circuit

UNITED STATE OF AMERICA,
Plaintiff – Appellee

v.

Daniel Griffin,
Defendant – Appellant

Appeal from the United States District Court
For the Southern District of Florida

**BRIEF OF THE APPELLANT DANIEL GRIFFIN
PURSUANT TO *ANDERS* v. *CALIFORNIA*, 386 U.S. 738 (1967)**

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**THIS CASE IS ENTITLED TO PREFERENCE
(CRIMINAL APPEAL)**

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Eleventh Circuit Rules 26.1-1, 26, 1-2, and 26.1-3, counsel for Appellant Daniel Griffin; Khurram Wahid, certifies that the following is a complete list of persons and entities who have an interest in the outcome of this case:

1. Altonaga, Hon. Cecilia M.
2. Becerra, Hon. Jacqueline
3. Caruso, Michael
4. Fajardo Orshan, Ariana
5. Goodman, Hon. Jonathan
6. Griffin, Daniel
7. Grove, Daren
8. Hernandez, Christine
9. Huck, Hon. Paul C.
10. Kane, Sara
11. Katz, Randall D.
12. Meyers, Matthew Patrick
13. Noto, Kenneth
14. Otazo-Reyes, Hon. Alicia M.
15. Redin, Jason A.
16. Smatchetti, Emily M.

17. Wahid, Khurrum B.

/s/ Khurrum B. Wahid
Khurrum B. Wahid, Esq.

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STATEMENT REGARDING ORAL ARGUMENT

Because counsel files this brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and is filing a motion to withdraw herewith, counsel takes no position with respect to whether oral argument is appropriate in this case.

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

The district court had jurisdiction of this case pursuant to 18 U.S.C. § 3231 because the appellant was charged with an offense against the laws of the United States. The court of appeals has jurisdiction over this appeal pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which give the courts of appeals jurisdiction over all final decisions and sentences of the district courts of the United States. The appeal was timely filed on February 21, 2020 [DE 77] from the final judgment and commitment order entered on February 5, 2020. [DE 76].

STATEMENT OF THE ISSUES

Whether any appealable issues of merit exist for Mr. Griffin upon direct appeal.

STATEMENT OF THE CASE

The appellant, Mr. Daniel Griffin, was the defendant in the district court. The appellee, the United States of America, will be referred to as the government. The record will be noted by reference to the document number and page number of the record on appeal. Mr. Griffin is currently incarcerated.

COURSE OF PROCEEDINGS AND DISPOSITION IN THE DISTRICT COURT

On July 11, 2019, Mr. Griffin was charged by a grand jury indictment with possession of a firearm and ammunition by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1). [DE 3]. On August 5, 2019, Mr. Griffin was arraigned and a detention hearing was held, resulting in Magistrate Judge Alicia M. Otazo-Reyes ordering Mr. Griffin be detained pending trial. [DE 9, 14]. On August 6, 2019, Assistant Federal Public Defender Sara Kane was assigned to represent Mr. Griffin. [DE 13]. On August 25, 2019, the Federal Public Defender moved to withdraw as counsel, and the Motion was granted. [DE 21, 22]. The Court thereafter appointed undersigned counsel. [DE 22].

A jury trial was held before senior district judge Paul C. Huck from November 12, 2019 to November 13, 2019. [DE 45, 48]. A jury found Mr. Griffin guilty on November 13, 2019. [DE 52]. He was subsequently sentenced to 120 months on February 5, 2020. [DE 76].

STATEMENT OF FACTS

Mr. Griffin was at the time of the incident 33 years old and is a lifelong resident of Miami, Florida. [PSI, DE 69, ¶ 43]. Gail Griffin, his mother, in her late 50's and unfortunately in poor health, resides in Sunrise, Florida. [PSI, DE 69, ¶ 43]. Mr. Griffin does not know the identity of his father. [PSI, DE 69, ¶ 43]. Due to his mother's severe drug addiction, and the absence of his father, Mr. Griffin was raised by his grandmother, Annie Griffin, in poor socioeconomic circumstances. [PSI, DE 69, ¶ 44]. In seventh grade, Mr. Griffin dropped out of middle school because was failing the seventh grade, and did not have enough money for clothes. [PSI, DE 69, ¶ 60].

While serving a sentence in a Florida state prison, Mr. Griffin earned his GED in 2016. [PSI, DE 69, ¶ 61]. Until his arrest, he was employed as a full-time dishwasher at the W hotel. [PSI, DE 69, ¶ 65]. Mr. Griffin has three children, Daniel Griffin, Jr. (7), Dariel Griffin (6), and Altonio Griffin (1). [PSI, DE 69, ¶ 46, 47]. Since 2001, Mr. Griffin has been in a relationship with Lasheka Hamilton, the mother of Dariel and Altonio Griffin. [PSI, DE 69, ¶ 47]. From 2018 until his arrest, Mr. Griffin was homeless after Ms. Hamilton kicked him out because of an argument. [PSI, DE 69, ¶ 49].

On October 31, 2017, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) had confidential informant Kandi Candidate initiate a

conversation with Mr. Griffin via Facebook Messenger and via cellphone to negotiate the purchase of a firearm that same day. [PSI, DE 69, ¶ 4]. Candidate and the agents traveled to Olinda Park, located at 2101 NW 51st St., in Miami, Florida, where Candidate was provided \$300 and a recording device to use during the transaction. [PSI, DE 69, ¶ 5]. A white van arrived at the park, and Candidate gave an unidentified black male in the passenger seat \$300 in exchange for a firearm from the driver, who Candidate alleged was Daniel Griffin. [PSI, DE 69, ¶ 6]. Mr. Griffin was acquitted of Count 1 of the indictment, stemming from the October 31, 2017 alleged transaction. [DE 52].

On July 10, 2019, Candidate and an undercover ATF agent again traveled to Olinda Park to purchase a 9-millimeter Glock pistol and a 30-round magazine from Mr. Griffin. [PSI, DE 69, ¶ 8]. The transaction, where Candidate exchanged \$500 for the firearm and ammunition, was recorded. [PSI, DE 69, ¶ 8]. On July 30, 2019, ATF agents arrested Mr. Griffin. [PSI, DE 69, ¶ 9]. While Mr. Griffin was acquitted of Count 1 he was convicted of Count 2 of the indictment, charging possession of a firearm and ammunition by a convicted felon stemming from the July 10, 2019 transaction. [DE 52].

STANDARD OF REVIEW

A brief filed pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *United States v. Blackwell*, 767 F.2d 1486 (11th Cir. 1985), “a reviewing court is required to conduct a full examination of the record to decide whether the case is wholly frivolous and, only after that inquiry, may it consider the appeal on the merits.” *United States v. Gholston*, 932 F.2d 904, 904 (11th Cir. 1991).

ARGUMENT AND CITATIONS OF AUTHORITY

This brief is filed pursuant to *Anders v. California*, 386 U.S. 378 (1967), inasmuch as, after carefully reviewing the record on appeal, including the transcripts of the trial and sentencing hearings, and performing legal research concerning the relevant law, undersigned counsel is of the opinion that this case presents no meritorious points for appeal on which the Appellant could possibly prevail.

CONCLUSION

Pursuant to *Anders v. State of California*, 386 U.S. 738 (1967), undersigned counsel has examined the record for issues which might arguably support an appeal. Counsel has found no meritorious argument on behalf of Mr. Griffin for direct appeal. Accordingly, undersigned counsel requests this Court's permission to withdraw as counsel of record and to afford Appellant Mr. Griffin the opportunity, if he so desires, to supplement this appeal raising any issues that he contends have merit.

Counsel certifies that he has forwarded Appellant Mr. Griffin a copy of this brief, the transcripts of the trial, as well as the sentencing transcript and a letter advising him of his right to supplement this brief, if he so chooses.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I CERTIFY that this brief complies with the type-volume limitation and typeface requirements of Fed. R. App. P. 32(a)(7)(B), because it contains 1589 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

/s/ Khurrum B. Wahid
Khurrum B. Wahid

CERTIFICATE OF SERVICE

I HEREBY certify that on this INITIAL BRIEF OF APPELLANT/DEFENDANT, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and sent seven copies to the Clerk of the Court via third party commercial carrier for delivery within three days. I also certify that the foregoing document is being served this day via CM/ECF on opposing counsel, Office of the United States Attorney, 99 N.E. 4th Street, Miami, Florida 33132.

/s/ Khurrum Wahid
Khurrum Wahid